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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/672,375	09/25/2003	Cang Lam	USGINZ02114	8551
40518	7590	07/24/2007	EXAMINER	
LEVINE BAGADE HAN LLP			WOO, JULIAN W	
2483 EAST BAYSHORE ROAD, SUITE 100			ART UNIT	
PALO ALTO, CA 94303			PAPER NUMBER	
			3731	
			MAIL DATE	
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			07/24/2007	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/672,375

Applicant(s)

LAM ET AL.

Examiner

Julian W. Woo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 13 and 15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13 and 15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

1. The finality of the Office action of April 27, 2007 is hereby withdrawn.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
3. Claims 13 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ogiu et al. (4,235,238) in view of Matsui et al. (6,352,503). Ogiu et al. discloses the invention substantially as claimed. Ogiu et al. disclose, at least in figures 13-21, an apparatus for securing a tissue fold within a patient, where the apparatus includes an anchor assembly having proximal (25) and distal (7) anchors connected by a length of suture (9), where the anchor assembly is adapted for adjustment of the length of suture disposed between the proximal and distal anchors while the anchor assembly is disposed across the tissue fold, where the apparatus further includes an anchor delivery

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system comprising a flexible delivery tube (14) having a lumen and a needle (3) disposed within the lumen, where the distal anchor is disposed within the needle during delivery, where an anchor tube (24) is coupled to a distal region of the flexible delivery tube, where the proximal anchor is disposed within the anchor during delivery, where the anchor delivery includes an anchor pushrod (11) in communication with an interior of the needle and adapted to eject the distal anchor from the needle, and where the anchor pushrod is further adapted to reversibly trap the suture to facilitate adjustment of the length of suture disposed between the proximal and distal anchors (via engagement between 11 and 7 and alternating movements of 21 and 3), and where the anchor pushrod is adapted to release the suture after the length of the suture has been adjusted. However, Ogiu et al. do not disclose a plication apparatus adapted to form a tissue fold within a patient. Matsui et al. disclose, at least in figure 1, a plication apparatus (e.g., 4) usable with an endoscopic device (1) analogous to the endoscopic device (i.e., the anchor assembly) of Ogiu et al. It would have been obvious to one having ordinary skill in the art at the time the invention was made, in view of Matsui et al., to include a plication apparatus with the anchor assembly of Ogiu et al. Such an apparatus would allow the grasping, accurate positioning, and/or plicating of tissue being further treated or secured by the anchor assembly of Ogiu et al.

#### ***Response to Amendment***

4. Applicant's arguments with respect to claims 13 and 16 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

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5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julian W. Woo whose telephone number is (571) 272-4707. The examiner can normally be reached Mon.-Fri., 7:00 AM to 3:00 PM Eastern Time, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571) 272-4696. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Julian W. Woo  
Primary Examiner

July 16, 2007